

**IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF OKLAHOMA**

<b>(1) PONCA MACHINE COMPANY, INC.,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. <u>CIV-18-958-D</u></b>
	)	
<b>(1) EMCASCO INSURANCE COMPANY,</b>	)	<b>(Kay County District Court</b>
	)	<b>Case No. CJ-2018-149)</b>
	)	
<b>Defendant.</b>	)	
	)	

**NOTICE OF REMOVAL**

**COMES NOW** Defendant EMCASCO Insurance Company (“EMC”), and pursuant to 28 U.S.C. §§ 1441 and 1446, files this Notice of Removal of the above-titled action from the District Court of Kay County, Oklahoma to the United States District Court for the Western District of Oklahoma. Because this Court has original jurisdiction based upon diversity of citizenship pursuant to 28 U.S.C. § 1332, Defendant EMCASCO Insurance Company hereby files this Notice of Removal.

**STATEMENT OF GROUNDS FOR REMOVAL**

1. Plaintiff Ponca Machine Company, Inc. (“Ponca Machine”) is an Oklahoma Corporation with its principal place of business in Oklahoma. [Exhibit 1, Petition at ¶ 1].
2. Defendant EMC is an insurance company incorporated under the laws of Iowa, with its principal place of business in Iowa. [See Exh. 1, ¶ 2].

3. Plaintiff's claims relate to alleged hailstorm damage to a building in Kay County, Oklahoma as a result of a storm on or about October 5, 2016. [*Id.* at ¶¶ 5-6].
4. Plaintiff commenced an action in the District Court of Kay County, Oklahoma, and served its petition on EMC through the Oklahoma Insurance Department on September 11, 2018. [Exh. 1; Exh. 2, Summons]. No other pleadings or papers have been served or filed with the District Court of Kay County. [*See* Exh. 3, Copy of Docket Sheet for CJ-2018-00149 (attached pursuant to LCvR81.2(a))].
5. Plaintiff's claims against EMC purport to allege breach of contract and breach of the duty of good faith and fair dealing, and Plaintiff further seeks punitive damages and attorneys' fees. [Exh. 1, ¶¶ 9-10, 12].
6. Plaintiff has failed to allege any amount in controversy in its Petition in violation of Oklahoma's Pleading Code. 12 Okla. Stat. §§ 2008 and 2009(G). [*See* Exh. 1].
7. EMC, without admitting liability or that any amounts are owed, alleges that the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and the jurisdictional threshold has been met, as this lawsuit concerns punitive damages, attorneys' fees, and Plaintiff's claim of entitlement to payment for alleged hail damage to a metal building and for replacement of its roof under the commercial property coverage of a policy of insurance issued by EMC to Plaintiff, which has coverage limits in excess of \$75,000. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S.Ct. 547, 551, 190 L.Ed.2d 495 (2014).

8. The filing of this Notice of Removal is within 30 days of receipt, through service or otherwise, of the initial pleadings setting forth Plaintiff's claims for relief upon which this action is based, and so is timely under 28 U.S.C. § 1446(b).
9. The United States District Court for the Western District of Oklahoma embraces Kay County, where the State court action is pending. *See* 28 U.S.C. § 116(c).
10. There are no other defendants from whom consent for removal is required per 28 U.S.C. § 1446(b)(2)(A).

### **CONCLUSION**

WHEREFORE, Defendant EMCASCO Insurance Company hereby files this Notice of Removal pursuant to 28 U.S.C. § 1441, removing the above-titled lawsuit from the District Court of Kay County, Oklahoma, to the United States District Court for the Western District of Oklahoma.

Respectfully submitted,

*s/Casper J. den Harder*  
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**ATTORNEYS FOR DEFENDANT  
EMCASCO INSURANCECOMPANY**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 1st day of October, 2018, a true and correct copy of the above and foregoing instrument was mailed first class U.S. mail, proper postage prepaid thereon to the following:

Benjamin D. Doyle, Esq.  
J. Darren Brown, Esq.  
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**ATTORNEYS FOR PLAINTIFF  
PONCA MACHINE COMPANY, INC.**

s/Casper J. den Harder\_\_\_\_\_